

JOSEPH P. RUSSONIELLO (SBN 44332)
 United States Attorney
 JOANN M. SWANSON (SBN 88143)
 Chief, Civil Division
 ABRAHAM A. SIMMONS (SBN 146400)
 Assistant United States Attorney
 MELANIE PROCTOR (SBN 22891)
 Assistant United States Attorney

450 Golden Gate Avenue, 9th Floor
 San Francisco, California 94102-3495
 Telephone: (415) 436-7264
 Facsimile: (415) 436-6748
 Email: abraham.simmons@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

SHANNON O. MURPHY,)	No. C 08-1628 CW
)	
Plaintiff,)	FEDERAL DEFENDANT'S CASE
)	MANAGEMENT STATEMENT
v.)	
)	
UNITED STATES POSTAL SERVICE,)	Date: July 22, 2008
)	Time: 2:00 p.m.
Defendant.)	Ctrm: 2, 4 th Floor

Plaintiff filed this breach of contract against the United States Postal Service (USPS) in California Superior because he was not hired as a casual employee on or about October 11, 2007. He alleges that he was not hired because the USPS improperly refused to accept his identification documentation. Plaintiff filed suit in Small Claims Court for Alameda County. The federal defendant removed the case to federal court. The federal defendant served a copy of the removal papers on plaintiff at "General Delivery, Berkeley, California 94704," the address listed on his complaint. The documents were returned to the defendant with the notation, "Forward Time Exp".¹

This case management conference statement is filed on behalf of the federal defendant

¹ On July 11, 2008, the federal defendant also served the court's June 30, 2008 Case Management Scheduling Order for Reassigned Civil Case on plaintiff at the address he provided. To date, that document has not been returned.

pursuant to Local Rule 16-9.²

1. Jurisdiction and Service

Plaintiff has not properly served the federal defendant. Plaintiff has not set forth a basis for jurisdiction over the federal defendant.

The federal defendant submits that the court lacks jurisdiction over plaintiff's breach of contract claim for a number of reasons including the fact that USPS employees derive the benefits and obligations of their positions pursuant to appointment, rather than a contractual relationship. See 39 U.S.C. § 1001 (a). Plaintiff cannot state a breach of contract claim against the USPS.

2. Facts

Plaintiff claims that on October 11, 2007, the USPS improperly refused to accept his application for Casual Temporary Employment for a three month period because he did not have proper identification. Plaintiff said he had a proper military identification.

The USPS denies the allegations.

3. Legal Issues

The federal defendant, appearing specially, will move to dismiss this case for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The Postal Reorganization Act provides that "[e]xcept as otherwise provided in this title, the Postal Service shall appoint all officers and employees of the Postal Service." 39 U.S.C. § 1001(a). The Postal Service is authorized to enter into employment contracts only for executive positions. 39 U.S.C. § 1001(c). Accordingly, courts which have considered the question have consistently held that an applicant may not bring an action for breach of contract, or breach of implied contract, for failure to appoint him or her to a promised position. See Fraginals v. Postmaster General, 265 F. Supp. 2d 1309, 1311-22 (S.D. Fla. 2003);

² Because the AUSA assigned to the case is unavailable the week of July 21- July 25, 2008, and because this CMC Statement is being filed late, the undersigned counsel attempted to contact plaintiff at the telephone provide by plaintiff on his complaint in order to move the CMC. Counsel was not successful. The person answering the telephone said that Mr. Murphy was not at that number.

1 Sims v. Local 308 Mailhandling, 1994 WL 268252, *4 (E.D. Pa. 1994); Reeder v. Frank, 813 F.
 2 Supp. 773, 778-79 (D. Utah 1992), *aff'd on other grounds*, 986 F. 2d 1248 (10th Cir. 1993);
 3 Baade v. United States Postal Service, 664 F. Supp. 627, 631 (D. Me. 1987); Campbell v. United
 4 States Postal Service, 1990 WL 36132, *3 (E.D. La. 1990), *aff'd* 925 F. 2d 1459 (5th Cir. 1991);
 5 Boyd v. United States Postal Service, 1983 WL 636, *4 (W.D. Wash. 1983), *aff'd on other*
 6 *grounds*, 752 F. 2d 410 (9th Cir. 1985); McLean v. United States, 1976 WL 23846 (Ct. Cl. 1976).

7 4. Motions

8 The federal defendant will file a motion to dismiss this case with prejudice for lack of
 9 jurisdiction and failure to state a claim.

10 5. Amendment of Pleadings

11 None are anticipated. The federal defendant has not yet answered or filed its motion to
 12 dismiss.

13 6. Evidence Preservation

14 Plaintiff was not a USPS employee and the USPS does not believe that it has any
 15 documents related to him. The USPS is, however, researching whether there are any relevant
 16 files or documents.

17 7. Disclosures

18 There have not been any disclosures.

19 8. Discovery

20 There has not been any discovery. The federal defendant will file a motion to dismiss for
 21 lack of jurisdiction and failure to state a claim and, because this is a legal issue, does not
 22 anticipate the need for discovery.

23 9. Class Action

24 Not applicable.

25 10. Related Cases

26 Not applicable.

27 11. Relief

28 Plaintiff seeks approximately \$5400 for his breach of contract claim.

12. Settlement and ADR

The federal defendant anticipates that this case will be dismissed on legal grounds and that there would be no basis for settlement or ADR.

13. Consent to Magistrate Judge For all Purposes

The federal defendant declined to consent to a Magistrate Judge.

14. Other References

Not applicable.

15. Narrowing of Issues

Not applicable for the reasons set forth above.

16. Expedited Schedule

Not applicable for the reasons set forth below.

17. Scheduling

The federal defendant requests that no dates be scheduled until after defendant's motion to dismiss is heard.

18. Trial

Not applicable for the reasons set forth above.

19. Disclosure of Non-party Interested Entities or Persons

None.

20. Other Matters

None.

Dated: July 21, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
MELANIE L. PROCTOR
Assistant United States Attorney

CERTIFICATE OF SERVICE

Murphy v. USPS
C 08-1628 JL

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following document(s):

DEFENDANT'S CASE MANAGEMENT STATEMENT

to be served this date upon the party(ies) as follows:

☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **PERSONAL SERVICE (BY MESSENGER)** I caused such envelope to be delivered by hand to the person or offices of each addressee below.

☐ **FACSIMILE (FAX)** Telephone No.: _____ I caused each such document to be sent by facsimile to the person or offices of each addressee below.

☐ **FEDERAL EXPRESS**

☐ **CERTIFIED MAIL**

☐ **BY E-MAIL** I caused each such document to be sent by e-mail to the person or offices of each addressee below.

to the party(ies) addressed as follows:

Shannon Murphy, Pro Se
General Delivery
Berkeley, CA 94704-9999

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 21, 2008 at San Francisco, California.

/s/
MELANIE L. PROCTOR